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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,419	09/16/2003	Abraham Jacob Sacks	030801	2708
44794	7590	04/10/2007		
GEORGE S. LEVY 3980 DEL MAR MEADOWS SAN DIEGO, CA 92130			EXAMINER HORTON, YVONNE MICHELE	
			ART UNIT	PAPER NUMBER
			3635	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/10/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/663,419

Applicant(s)

SACKS ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Withdrawal of Allowable Subject Matter*

The indicated allowability of claim 3 is withdrawn in view of a more detailed review of the reference(s) to DOUTHWAITE. Rejections based on the newly cited reference(s) follow.

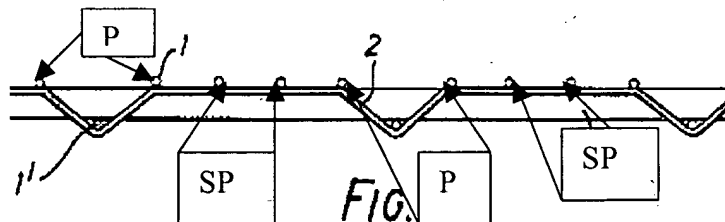
### *Specification*

The amendments to the specification submitted 03/07/07 and 09/05 06 have been entered.

### *Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,7,12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,003,178 DOUTHWAITE. DOUTHWAITE discloses a welded wire lathing, column 2, lines 5-8, including a plurality of spaced-apart, approximately parallel transverse strands (2,T) substantially located in a first plane; a plurality of spaced apart,



approximately parallel primary longitudinal strands (P) also substantially located in said first plane, intersecting, in contact with, and welded, column 2, lines 5-11 to said

transverse strands (2,T), a plurality of secondary longitudinal strands (SP) also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands (P) thus forming pairs of longitudinal strands (SP) such that the pairs (SP) defining a plurality of longitudinal slots (the space between the pairs (SP)) located at predetermined spaced intervals extending across said lathing material, said plurality of transverse strands (T) have a plurality of spacing furs (F) situated between two of said primary strands (P) and formed by bending said transverse strands into indentations having tips disposed in a second plane, away from the first plane and forming a plurality of rectangular meshes, see figure 5.

DOUTHWAITE discloses the basic claimed structure except for explicitly detailing that the wire is wound into a roll. Although it is old and very well known in that art to wind weld wire in a roll, the applicant is reminded that the limitation of the weld wire being "wound into a roll" is a method step. The method of producing or forming a device is not germane to the issue of patentability of the device itself. Thus, the device of DOUTHWAITE merely only needs to be capable of being wound into a roll. Clearly, although DOUTHWAITE includes additional structure such as a rigid member, the claim is directed to only the weld wire of which this rejection concentrates. Thus, the weld wire, alone, of DOUTHWAITE is capable of being wound into a roll. Regarding claim 7, both the primary (P) and secondary (SP) longitudinal strands have a shaped cross-sectional profile, clearly circular. In reference to claim 12, depending upon how the mesh of DOUTHWAITE is positioned, the transverse strands (T) are inherently capable of being disposed in the vertical direction and the secondary (SP) and primary

longitudinal strands (P) are inherently capable of being disposed in the horizontal direction. Regarding claim 13, the strands (T), (P) and (SP) are inherently galvanized steel, column 2, lines 31-34.

Claims 2,5,6,8-10,11 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,003,178 DOUTHWAITE. DOUTHWAITE discloses the basic claimed lathing material as detailed above, except for width of the slots, except for the use of fasteners, except for explicitly disclosing that his material can be wound into rolls, except for explicitly disclosing a flattened cross-sectional profile of the strands, except for disclosing an angle of inclination of the sides of the spacing furs, and except for disclosing a dimension that the spacing furs are inclined from the first plane. In reference to claim 2, the applicant is reminded that the fasteners are not a positive part of the claimed limitations, and as such, the prior art merely has to be capable of receiving fasteners. Thus, DOUTHWAITE although does not detail the use of a fastener, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (SP) are capable of receiving the shaft of a fastener while also retaining the head of the fastener. Although fasteners are not disclosed by DOUTHWAITE, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose or sliding from its original position when concrete or something similar is poured thereon. In further reference to claim 2, and the width of the slots, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to select a slot width suitable for use with fasteners

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selected as an obvious matter of design choice. For instance, if the lathing were to be secured requiring little to no movement perhaps a slot width small enough to make a "play-free" fit would be chosen. However, if the lathing required a little movement, such as for readjusting the lathing prior to pouring of concrete, for instance, a larger slot width would be fitting because then there would be a little room about the head of the fastener thereby allowing movement or "play" for adjustments. In reference to claims 4-6,8,9 and 17, DOUTHWAITE does not disclose a specific cross-sectional shape or dimension for his strands. He does however, show strands that appear to be round or circular and details that his strands can be heavy gauge wire, column 1, line 36. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the selection of the cross-sectional shape or dimension of the strands would be an obvious matter of design choice suitable for the use intended. For instance, if a more rigid lathing is desired a larger sized cross-sectional dimension would be needed; whereas, if a less rigid lathing were required, a smaller cross-sectional dimension would be needed. With further reference to claim 8, again, although DOUTHWAITE does not disclose the use of a flattened cross-sectional shape strands, the applicant has not shown any criticality for a shaped cross-sectional shape strand over a flattened cross-section shape strand. Hence, the selection of either an art known circular shape or a flattened shape would have been well within the general skill of a worker in the art. Regarding claims 10 and 11, DOUTHWAITE does not detail an angle of inclination of the sides of the spacing furs. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle of

inclination suitable for the use intended as an obvious matter of design choice. For instance, a larger angle of inclination allows the lathing to be positioned more evenly and securely against a supporting structure; whereas a smaller sized angle creates a sharper or less flattened area that is placed against the supporting surface. The sharper area is not as stable as the more flattened are created by the larger angle of inclination of the sides of the spacing furs. Also, it is clear from the figures that the angle of inclination of the side walls of the furs is clearly approximately 45 degrees. In reference to claim 14, DOUTHWAITE does not detail how far the spacing furs extend from the first plane. However, once more, this is an obvious matter of design choice that would depend upon the desired strength of the lathing and how the lathing is intended to be used.

Claims 4 and 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,003,178 to DOUTHWAITE in view of US Patent #5,540,023 to JAENSON.

In further regards to claims 4 and 5, DOUTHWAITE does not explicitly detail a grid spacing of the strands. However, JAENSON discloses a grid spacing of 2 inches, column 6, line 13. He does not, however disclose a grid spacing of specifically 1.4-1.6 inches but clearly 1.4-1.6 falls within JAENSON's range of 2 inches. Again, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the grid spacing of 1 to 2 inches for DOUTHWAITE as taught by JAENSON, in order to ensure proper adhesion of concrete or plaster disposed thereon. Further, the selection of grid spacing is an obvious matter of design choice suitable for

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the use intended. A grid having smaller spacing might be more rigid or firm; whereas, a grid having larger spacing might be a bit less rigid.

***Allowable Subject Matter***

Claims 15-18 are allowed.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot-in-part in view of the newly revised ground(s) of rejection.

***Conclusion***

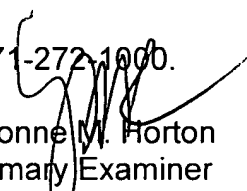
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Yvonne M. Horton  
Primary Examiner  
Art Unit 3635

04/02/07